

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

SHIRLEY GRAFF

Claimant

VS.

TRANS WORLD AIRLINES

Respondent

Self-Insured

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Docket No. 176,398

ORDER

This case comes before the Board on remand from the Kansas Supreme Court.

APPEARANCES

Michael L. Hodges of Lenexa, Kansas, appeared on behalf of claimant. Thomas Clinkenbeard of Kansas City, Missouri, appeared on behalf of respondent, a qualified self-insured.

ISSUES

In a decision entered in this case on September 25, 1998, the Appeals Board found the Kansas Workers Compensation Act does not apply to the injury alleged in this case. The Kansas Supreme Court reversed that finding but remanded the case for the Appeals Board to make findings relating to whether respondent is entitled to an offset for retirement benefits.

BOARD DECISION ON REMAND

At the conclusion of its decision, the Kansas Supreme Court Stated:

We reverse the Board and reinstate the ALJ's decision, subject to the Board's determining on remand what, if any, offset TWA is entitled to pursuant to K.S.A. 1998 Supp. 44-501(h).

The Board concludes TWA is not entitled to an offset. First, the accident in this case occurred in 1991. The provisions for offset were added to the Act in 1993 and the Board considers the offset to be a substantive rule. *Osborn v. Electric Corporation of Kansas City*,

23 Kan. App. 2d 868, 936 P.2d 297, *rev. denied* 262 Kan. ____ (1997). Accordingly, the law in effect at the time of the injury, which contained no provision for offset of retirement benefits, should apply.

In addition, the record in this case contains no evidence of the amount of any retirement payments. For that additional reason, no offset should apply.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the original Award by the Administrative Law judge is reinstated without offset.

IT IS SO ORDERED.

Dated this ____ day of January 2000.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: Michael L. Hodges, Lenexa, KS
Thomas Clinkenbeard, Kansas City, MO
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director